

1 BILL NO. S-85-09-11

2 Special Ordinance No. S-178-85

3 AN ORDINANCE AUTHORIZING AND DIRECTING THE
4 ISSUANCE OF THE CITY'S \$2,900,000 ECONOMIC
5 DEVELOPMENT REVENUE BONDS (SCOTFOAM CORPORATION
6 PROJECT), 1985 SERIES; THE EXECUTION AND DELIVERY
7 OF A TRUST INDENTURE, A LOAN AGREEMENT, A
8 PLACEMENT AGREEMENT AND THE BONDS; AND THE
9 ENDORSEMENT OF A NOTE; AND PROVIDING FOR THE
PRINCIPAL AMOUNT, REDEMPTION AND MATURITY
PROVISIONS OF, AND RATE OF INTEREST ON, THE
BONDS; APPOINTING A TRUSTEE AND A CO-TRUSTEE;
REQUESTING THE TRUSTEE TO AUTHENTICATE THE BONDS;
AUTHORIZING INCIDENTAL ACTION; AND REPEALING
INCONSISTENT ACTIONS.

10 WHEREAS, the Fort Wayne Economic Development Commission
11 (the "Commission"), by resolution adopted on September 6, 1984,
12 agreed to take actions required to issue \$2,900,000 economic deve-
13 lopment revenue bonds of the City of Fort Wayne (the "City") to
14 finance the construction of improvements to an existing
15 polyurethane foam manufacturing facility located in Fort Wayne,
16 Indiana, and the acquisition of equipment for installation therein
17 (collectively, the "Project Facilities") by SCOTFOAM CORPORATION,
18 a Delaware corporation (the "Company"), as is authorized by
19 Indiana Code Sections 36-7-11.9 and 36-7-12 (the "Act"); and

20 WHEREAS, the Company has assured the Commission and this
21 Common Council that financing the Project Facilities will promote
22 diversification of industry and job opportunities in and near the
23 City and will be of benefit to the health and welfare of the City;
24 and

25 WHEREAS, the Commission conducted a public hearing on
26 September 6, 1984; rendered its Project Report dated September 9,
27 1984 regarding the Project Facilities; and adopted a resolution on
28 September 19, 1985, which resolution has been presented to this
29 Common Council, finding that the financing of the Project
30 Facilities complies with the purposes and provisions of the Act
31 and that such financing will be of benefit to the health and
32 welfare of the City; and

1 WHEREAS, the construction, acquisition and installation
2 of the Project Facilities will be undertaken pursuant to the terms
3 of a Loan Agreement (the "Agreement") by and between the City and
4 the Company, and will be financed pursuant thereto through the
5 issuance by the City of its Economic Development Revenue Bonds
6 (SCOTFOAM CORPORATION Project), 1985 Series (the "Bonds"); and

7 WHEREAS, pursuant to the Agreement the Company will agree
8 to make loan repayments and, in witness whereof, will deliver its
9 Economic Development Revenue Note (the "Note") to the Issuer for
10 endorsement to the Trustee and the Co-Trustee; and

11 WHEREAS, the Bonds will be issued under and secured by a
12 Trust Indenture (the "Indenture") by and among the City, Marine
13 Midland Bank, N.A., a national banking association (the
14 "Trustee"), and Fort Wayne National Bank, a national banking associa-
15 tion (the "Co-Trustee"); and

16 WHEREAS, the Bonds are subject to purchase by the Company
17 upon demand of the Bondholders, and may be remarketed by the Bank,
18 in its capacity as remarketing agent, under a Remarketing
19 Agreement by and between the Company and the Bank; and

20 WHEREAS, the Company has agreed under the Agreement to
21 cause to be issued an Irrevocable Letter of Credit (the "Letter of
22 Credit") by Manufacturers Hanover Trust Company, a New York
23 banking corporation (the "Bank"), in favor of the Trustee in order
24 to secure payment of the Bonds and the purchase price thereof upon
25 demand of the Bondholders; and

26 WHEREAS, said Letter of Credit is issued pursuant to a
27 Reimbursement Agreement by and between the Bank and the Company,
28 and the Company's obligations to the Bank under said Reimbursement
29 Agreement are secured by a Mortgage and by a Security Agreement,
30 and by a Pledge and Security Agreement pertaining to Bonds
31 purchased upon demand of the Bondholders with the proceeds of a
32 drawing under said Letter of Credit; and

1 WHEREAS, pursuant to a Placement Agreement (the
2 "Placement Agreement") by and among the City, the Company and the
3 Bank, in its capacity as placement agent (the "Placement Agent"),
4 the Placement Agent has arranged for the purchase of the Bonds by
5 certain purchasers, in connection with which there has been pre-
6 pared a Preliminary Limited Offering Memorandum and a Limited
7 Offering Memorandum for dissemination to a limited number of
8 investors; and

9 WHEREAS, the Commission has approved this form of
10 Ordinance, has considered the issue of adverse competitive effect
11 and has approved the forms of, and has transmitted for approval by
12 this Common Council, the Trust Indenture, the Loan Agreement and
13 the Placement Agreement; and

14 WHEREAS, certain action is required to be taken by this
15 Common Council as a prerequisite to the issuance and sale of the
16 Bonds;

17 NOW, THEREFORE, BE IT ORDAINED by the Common Council of
18 the City of Fort Wayne, Indiana that:

19 Section 1. FINDINGS. It is hereby found that the
20 financing of the Project Facilities, the issuance and sale of the
21 Bonds, the loan of the proceeds thereof to the Company for the
22 acquisition, construction and installation of the Project
23 Facilities and the payment of the Bonds by assignment of the loan
24 repayments to be made by the Company under the Agreement and the
25 Note, comply with the purposes and provisions of the Act and will
26 be of benefit to the health and welfare of the City.

27 Section 2. PROJECT FACILITIES. The Project Facilities
28 will consist of the improvements and equipment described by
29 Exhibit A to the Agreement, to be located at 3005 Commercial Road,
30 within the city limits of the City.

31 Section 3. COMPETITIVE EFFECT. At the above-referenced
32 public hearing conducted by the Commission, the Commission con-

1 sidered whether the Project Facilities would have an adverse com-
2 petitive effect on any similar facilities located in the City, and
3 found, based on special findings of fact set forth in the above-
4 referenced September 9, 1985 resolution presented herewith, that
5 the Project Facilities would not have an adverse competitive
6 effect. This Common Council hereby confirms the findings set
7 forth in said resolution, and concludes that the Project
8 Facilities will not have an adverse competitive effect on any
9 other similar facilities in the City, and the facilities will be
10 of benefit to the health and welfare of the City.

11 Section 4. APPROVAL OF THE AGREEMENT, THE INDENTURE AND
12 THE PLACEMENT AGREEMENT. The financing of the Project Facilities
13 hereby is approved. The forms of the Agreement (together with the
14 form of Note appended thereto), the Indenture and the Placement
15 Agreement, all as presented to this meeting (copies of which shall
16 be filed with the records of the Common Council) are approved. In
17 accordance with the provisions of I.C. 36-1-5-4, two (2) copies of
18 each of said documents are on file in the office of the Clerk for
19 public inspection. The Mayor and the Clerk are authorized and
20 directed to execute by their manual signatures and deliver, and
21 (where appropriate) the Clerk is authorized and directed to affix
22 the seal of the City to, and attest, said instruments in substan-
23 tially the forms hereby approved. The Mayor and the Clerk, or
24 either of them, are authorized to endorse the Note to the Trustee
25 and the Co-Trustee. The Mayor and Clerk hereby expressly are
26 authorized to approve any modifications or additions to said
27 instruments occurring after the date of this Ordinance, upon the
28 review and advice of the City Attorney; it being the express
29 understanding of this Common Council that said documents to be
30 executed by the City are in substantially final form on the date
31 of this Ordinance. The approval of said modifications or addi-
32 tions, including the review and advice of the City Attorney, shall

1 be evidenced conclusively by the execution thereof and (as
2 appropriate) the attestation thereof and affixing of the seal
3 thereto; provided, however that no such modification or addition
4 shall affect the terms contained in this Ordinance pursuant to
5 Section 27(a)(1)through (a)(11) of the Act without further con-
6 sideration by the Common Council.

7 Section 5. ISSUANCE OF THE BONDS. The issuance of the
8 Bonds is authorized and approved. The form of the Bonds contained
9 in the form of Indenture is approved; the facsimile signatures of
10 the Mayor and Clerk are authorized and directed to be printed on
11 the face of the Bonds in substantially the form hereby approved,
12 with such modifications and additions therein as are permitted as
13 provided in Section 4 hereof; and the facsimile seal of the City
14 is adopted and authorized to be imprinted thereon; and the Mayor
15 and Clerk, or either of them, are authorized and directed to
16 deliver the Bonds to the Trustee for authentication under the
17 Indenture and thereupon to deliver them or cause them to be deli-
18 vered to the Placement Agent on behalf of the purchasers thereof
19 pursuant to the Placement Agreement against receipt of the
20 purchase price therefor and to deposit or cause to be deposited
21 the amount so received with the Trustee as provided in the
22 Indenture.

23 Section 6. TERMS OF BONDS. The Bonds shall be in the
24 aggregate principal amount of \$2,900,000. The Bonds shall mature
25 on October 1, 2005 and bear interest initially at variable rates,
26 not to exceed 15 percent, per annum determined in the manner set
27 forth in the Indenture. The interest rate may be converted to a
28 fixed rate of interest, not to exceed 18 percent per annum, in the
29 manner set forth in the Indenture. The Bonds shall be dated,
30 numbered, be in the denominations, in registered form, carrying the
31 registration, transferability and exchangeability privileges, and
32 shall be payable in the medium of payment and at such places, sub-

1 ject to mandatory and optional redemption prior to maturity, to
2 purchase upon demand of the Bondholders and entitled to the
3 security of the revenues of the City derived under the Agreement,
4 all as provided in the form of Indenture presented herewith, the
5 terms whereof pertaining to the terms of the Bonds set forth in
6 Section 6 being incorporated herein by this reference. The Bonds
7 shall be payable from the revenues derived from the loan
8 repayments made pursuant to the Agreement and the Note, from
9 drawings on the Letter of Credit, and otherwise, all as provided
10 in the Indenture. The Bonds shall never constitute a general
11 obligation of, an indebtedness of, or a charge against the general
12 credit of the City of Fort Wayne, nor are the Bonds payable in any
13 manner from revenues raised by taxation.

14 Section 7. SALE OF THE BONDS. The Bonds shall be sold
15 to the purchasers pursuant to the terms of the Placement Agreement
16 at a price equal to 100 percent of the principal amount thereof.

17 Section 8. AUTHENTICATION OF BONDS. The Trustee is
18 requested to authenticate the Bonds and to deliver them upon
19 satisfaction of the conditions for closing set forth in the
20 Placement Agreement upon receipt of the purchase price therefor.

21 Section 9. APPOINTMENT OF THE TRUSTEE. The City
22 appoints Marine Midland Bank, N.A., a national banking asso-
23 ciation, as Trustee, Bond Registrar, Authenticating Agent and
24 Paying Agent, with the rights and obligations as are provided
25 therefor under the Indenture; and Fort Wayne National Bank, a
26 national banking association, as Co-Trustee, with the rights and
27 obligations as are provided therefor under the Indenture.

28 Section 10. CUSIP NUMBERS; BOND COUNSEL OPINION.
29 Pursuant to the recommendation of the American Bankers Association
30 Committee on Uniform Security Identification Procedures ("CUSIP"),
31 a CUSIP number shall be imprinted on each of the Bonds. A copy of
32 the text of the opinion of Ballard, Spahr, Andrews & Ingersoll,

1 Washington, D.C., Bond Counsel, shall be printed on the Bonds, and
2 the Trustee hereby is requested to certify to the correctness
3 thereof.

4

5 Section 11. LIMITED OFFERING MEMORANDUM. The Placement
6 Agent is authorized to include as a part of the Preliminary
7 Limited Offering Memorandum and the Limited Offering Memorandum a
8 brief description of the City in such form or forms as the officer
9 executing the general certificate required of the City under the
10 Placement Agreement upon closing shall approve, such approval to
11 be evidenced conclusively by execution of said certificate.

12

13 Section 12. INVESTMENT OF FUNDS. The Trustee, by virtue
14 of this Ordinance and without further authorization from the City,
15 is authorized, directed and requested to invest and reinvest all
16 moneys available therefor under and pursuant to the Indenture and
17 the Agreement.

18

19 Section 13. INCIDENTAL ACTION. The Mayor, the Clerk and
20 the other officials of the City are authorized and directed to
21 execute and deliver such other documents and instruments and to
22 take such other action as may be necessary or appropriate in order
23 to effectuate the execution and delivery of the Indenture, the
24 Agreement and the Placement Agreement and the issuance and sale of
25 the Bonds, all in accordance with the foregoing Sections hereof,
26 including without limitation the execution and filing of the elec-
27 tion referenced in Section 103(b)(D) of the Internal Revenue Code
28 of 1954, as amended, and of the Information Return for Private
29 Activity Bond Issues (Form 8038) described in Section 103(1) of
30 said Code.

31
32

1 Section 14. REPEAL. This Ordinance shall take effect
2 immediately upon its adoption and signing by the Mayor, and all
3 prior ordinances and resolutions or parts thereof inconsistent
4 herewith are repealed to the extent of such inconsistency.

Janet G. Bradbury
COUNCILMAN

COUNCILMAN

7 ADOPTED BY ECONOMIC DEVELOPMENT
COMMISSION AND APPROVED AS TO FORM.

~~John J. Wernet, Attorney for the
Economic Development Commission~~
Dated this 23d day of September, 1985

APPROVED AS TO FORM AND LEGALITY.

Bruce O. Boxberger, City Attorney
Dated this 23^d day of September, 1985

Read the first time in full and on motion by Brett Hay, seconded by Dolan, and duly adopted, read the second time by title and referred to the Committee Fairie (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne Indiana, on _____, the _____ day of _____, 19_____, at _____ o'clock _____ M., E.

DATE: 9-24-85.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Eastish, seconded by Steer, and duly adopted, placed on its passage. PASSED (EOST) by the following vote:

| | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAINED</u> | <u>ABSENT</u> | <u>TO-WIT:</u> |
|--------------------|-------------|-------------|------------------|---------------|----------------|
| <u>TOTAL VOTES</u> | <u>9</u> | — | — | — | — |
| <u>BRADBURY</u> | <u>✓</u> | — | — | — | — |
| <u>BURNS</u> | <u>✓</u> | — | — | — | — |
| <u>EISBART</u> | <u>✓</u> | — | — | — | — |
| <u>GiaQUINTA</u> | <u>✓</u> | — | — | — | — |
| <u>HENRY</u> | <u>✓</u> | — | — | — | — |
| <u>REDD</u> | <u>✓</u> | — | — | — | — |
| <u>SCHMIDT</u> | <u>✓</u> | — | — | — | — |
| <u>STIER</u> | <u>✓</u> | — | — | — | — |
| <u>TALARICO</u> | <u>✓</u> | — | — | — | — |

DATE: 10-8-85.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING MAP) ORDINANCE (RESOLUTION) NO. S 178-85.
on the 8th day of October, 1985.

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

Mark E. O'Donnell
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana,
on the 9th day of October, 1985.
at the hour of 11:30 o'clock A. M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 11th day of October
1985, at the hour of 9:30 o'clock A. M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR., MAYOR

BILL NO. S-85-09-11

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN (ORDINANCE) (RESOLUTION) AN ORDINANCE AUTHORIZING AND DIRECTING THE ISSUANCE OF THE CITY'S \$2,900,000 ECONOMIC DEVELOPMENT REVENUE BONDS (SCOTFOAM CORPORATION PROJECT), 1985 SERIES; THE EXECUTION AND DELIVERY OF A TRUST INDENTURE, A LOAN AGREEMENT, A PLACEMENT AGREEMENT AND THE BONDS; AND THE ENDORSEMENT OF A NOTE; AND PROVIDING FOR THE THE PRINCIPAL AMOUNT, REDEMPTION AND MATURITY PROVISIONS OF, AND RATE OF INTEREST ON, THE BONDS; APPOINTING A TRUSTEE AND A CO-TRUSTEE; REQUESTING THE TRUSTEE TO AUTHENTICATE THE BONDS; AUTHORIZING INCIDENTAL ACTION; AND REPEALING INCONSISTENT ACTION.

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION AND BEG
LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE)
(RESOLUTION) DO PASS DO NOT PASS WITHDRAWN

YES

NO

Ben A. Eisbart BEN A. EISBART
CHAIRMAN

Janet G. Bradbury JANET G. BRADBURY
VICE CHAIRWOMAN

Samuel J. Talarico SAMUEL J. TALARICO

Thomas C. Henry THOMAS C. HENRY

James S. Stier JAMES S. STIER

CONCURRED IN 10-8-85

SANDRA E. KENNEDY
CITY CLERK